

Congress of the United States
House of Representatives
Washington, DC 20515-2107
May 22, 2001

Dr. Richard A. Meserve
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Meserve:

I am writing to express my concern regarding the termination of employment of Mr. Ronney Bath, a contract employee with U.S. Robotech who was providing information technology support at the U.S. Nuclear Regulatory Commission's (NRC) Region IV Office in Arlington, Texas. Mr. Bath was terminated from his position on December 22, 2000, after he had written letters of complaint regarding allegedly illegal practices of certain NRC employees at Region IV. One of these letters was sent anonymously to the NRC's Office of the Inspector General, and the other letter was sent to Region IV Regional Administrator Ellis W. Merschoff. It is alleged that Mr. Merschoff shared the contents of these letters with other NRC employees at Region IV. The circumstances of Mr. Bath's termination would suggest that his letter disclosing violations of certain statutes and other improprieties was a factor in his dismissal.

I have been informed that on February 5, 2001, the two employees against which Mr. Bath had made his complaint were placed on administrative leave and were escorted from the Region IV office by Federal agents. These two employees have since resigned from the NRC, but Mr. Bath has not been reinstated to his position of employment. He has since filed a complaint with the Commission against his former employer, U.S. Robotech.

As you know, for many years I have been concerned with the treatment of employees who have disclosed information about potential safety issues at NRC licensed facilities. There have been repeated instances over the past several years of harassment by employees of the NRC or of its licensees. One recent example is a Department of Labor Administrative Review Board finding that the Tennessee Valley Authority had forced an employee from his job at the Watts Bar nuclear plant in order to cover up the safety concerns that he had raised. When I have brought up concerns of this nature in the past, I have been assured repeatedly by the Commission that they will be addressed. The recent events at Region IV suggest that the NRC has not taken steps to educate its own employees and contractors effectively in the importance of the responsible reporting of violations of the law and the appropriate treatment of those who report the violations. The NRC has a responsibility to ensure the safe and effective regulation of the nuclear facilities in this country, and the very hint that a safety-conscious work environment is not in place within the agency itself would raise troubling questions about NRC's effectiveness in performing its duties.

Additionally, I am particularly concerned by the March 28, 2001, correspondence to Mr. Bath's attorney from Mr. Merschoff which suggests that Mr. Merschoff has been delegated with the responsibility to review the results of the NRC Inspector General's investigation into Mr. Bath's complaint and "determine the appropriate agency action". As Mr. Merschoff is named in the complaint as having shared privileged information provided by Mr. Bath, it seems highly unusual that he should be put in the position of reviewing any Inspector General investigation into his own conduct.

I urge your timely and thorough review of Mr. Bath's case, as the evidence would suggest that he has been punished for reporting wrongdoing at Region IV. A tragic human cost can result from the harassment, intimidation, and retaliation against those who step forward and reveal wrongdoing and safety issues. Additionally, I strongly urge you to review the management practices and work environment at Region IV, as my staff has been contacted by a number of NRC employees in recent months regarding an atmosphere of harassment and unprofessional conduct at Region IV. In order to better understand the facts and circumstances relating to this case, as well as the NRC's policies and procedures regarding legally protected activities, I am writing to request your answers to the following questions:

- (1) What programs does the NRC have in place to raise awareness of proper handling of employee or contractor disclosures by managers employed by the NRC itself? Have these ever been reviewed to assess their effectiveness?
- (2) What NRC guidelines govern the communication between managers at the NRC and its contractors, such as U.S. Robotech, the company that employed Mr. Bath? Do the guidelines forbid or restrict any communication regarding legally protected activity by contract employees? Has there been a violation of those guidelines in this circumstance?
- (3) According to 41 U.S.C. Sec. 265, if it is found that an employee of a contractor has been subjected to a reprisal for reporting "information relating to a substantial violation of law related to a contract" to "an authorized official of an executive agency", then the head of the executive agency may (1) "order the contractor to take affirmative action to abate the reprisal", (2) "order the contractor to reinstate the person to the position that the person held before the reprisal" and provide back pay and other employee benefits that would have been received in the absence of the reprisal, and/or (3) "order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses" associated with seeking relief from the reprisal. If it is found that Mr. Bath was terminated in retaliation for disclosures to the agency, will you take any or all of these actions against U.S. Robotech? Will you see that he is reinstated to his previous or a similar position in providing Information Technology support at Region IV?
- (4) Have there been any previous decisions made by the NRC pursuant to 41 U.S.C. Sec. 265? What were the circumstances that led to those decisions? The statute indicates that the review should be made by the head of the agency, but, as I stated earlier, Mr. Merschoff appears to think that he will be reviewing the investigation. Has this role

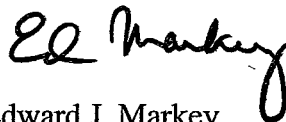
been delegated to him? If so, why? Notwithstanding the fact that he is the Regional Administrator for Region IV, is it NRC policy to involve persons named in complaints in decisions pertaining to those complaints?

- (5) Before 41 U.S.C. Sec. 265 became law, what was the standard practice by the NRC to provide remedies to employees of contractors who had been found to have been retaliated against?
- (6) Were you aware of problems with the work environment at Region IV prior to this incident? Will you seek to determine if information on mismanagement at Region IV has been blocked from reaching your office? Why or why not? Will you conduct a review to determine if Region IV is adhering to and enforcing compliance with NRC policies regarding the establishment and maintenance of a safety-conscious work environment, as defined in 61 FR 24336, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation", and other applicable NRC rules and regulations? Why or why not?
- (7) What actions does the NRC take against employees who have been pursuing private and/or illegal business activities on the premises of NRC facilities? Have there been other cases such as the ones alleged by the complaint as having occurred at Region IV? Are there other indications that NRC employees are engaging at work in activities not directly related to their employment?
- (8) In the complaint filed on behalf of Mr. Bath, it is alleged that there are "serious deficiencies" in the communication system that the NRC relies upon to remain in contact with nuclear power plants during a natural disaster or a military or terrorist attack. Have you initiated an investigation into these allegations? If not, why not? If so, please provide me with a report on the results of your investigations. What steps will you take to ensure the integrity of the communication systems with nuclear power plants?

Prompt action by the Inspector General and your office on this matter is crucial. Mr. Bath was removed from his position nearly 6 months ago. I have been informed that since then he and his family have suffered substantial personal financial loss from his unemployment. I would appreciate an answer to the matters raised in my letter by June 12, 2001. If you have any questions on these issues, please contact Brendan Plapp of my staff at 202-225-2836.

Thank you for your careful attention to this case, and I am looking forward to your response.

Sincerely,



Edward J. Markey
Member of Congress